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D.B. CIVIL SPECIAL APPEAL [W] No. 123/2006.
SMT. ARCHANA RUHELA VS. STATE OF RAJ. & ORS.

DATED :11/12/2006.

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. GOPAL KRISHAN VYAS J.

Mr.G.R.Punia for the appellant;
Mr.N.M.Lodha AAG
Mr.R.S.Bhati for MR.J.P.Joshi for respondent.

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Heard learned counsel for the parties. Learned Additional Advocate General states that since the matter hinges on interpretation of the Notification, no reply is necessary.

The sole controversy raised in this case is about the fact whether the petitioner is a Member of Other Backward Class as notified under the Rajasthan. Petitioner was born and educated in Uttar Pradesh and the Caste Certificate issued in her name described her caste to be “Chhipi” in her maiden status. By marriage she became domiciled of Rajasthan and was married to Atma Ram “Chhipa”. Her domicile and caste certificate issued by Rajasthan described her caste as “Chhipa”.

She had applied to participate in the selection for appointment as medical officer in pursuance of advertisement dated 05.07.2005 issued by the respondents and she was issued her identity card in the category of OBC [Women] candidate. However, when the result was declared, she was not

called for interview by rejecting her candidature as a candidate against the reserved seat for OBC [Women] by stating that her candidature does not come under OBC [Women] seat and she does not pass amongst the general candidates, therefore, her application was rejected and it was communicated that it was not possible for the RPSC to call her for interview.

This led to file the writ petition which was dismissed in limine by the learned Single Judge on the ground that it has not been shown to the Court that caste "Chhipi" is in the list of OBC in Rajasthan.

On appeal, it was pointed out that in the list of OBC in the State of Rajasthan vide Notification dated 06.08.1994 as amended from time to time at Item No.8 the following Entry has been made :-

"Chhipa [Chhipi], Bhavsar, Nama, Khati Chhipa, Rangraj and Nilgar"

Considering this the appeal was admitted. By way of ad interim relief, the respondents were directed to call the petitioner for interview for recruitment to the post of Medical Officer, however, the result of the appellant was not to be declared.

By detailed order dated 04.04.2006 passed in the presence of counsel for the State as well as the counsel for the RPSC the Commission was directed to

declare the result of the applicant and publish the same subject to outcome of this appeal.

The result of the petitioner has since been declared. She has been found in merit amongst the OBC Candidates and her name was recommended by the RPSC to the State for appointment as was ordered by this Court on 19.10.2006.

In the circumstances, whether we take the Notification under the UP State or of the State of Rajasthan, the "Chhipi" is a caste which is included amongst the OBC in the Notification issued by State of Rajasthan also therefore. It cannot be contended by State of Rajasthan or any of the authorities under the stated to contend that "Chhipi" is not a caste recognized as OBC within the State of Rajasthan.

If the petitioner is eligible as a candidate from the OBC Category whether on the basis of her caste as per birth or by marriage within the State of Rajasthan, she falls within the category of OBC and could not have been denied consideration being not in merit amongst the general category of candidates. There is no disputes that amongst the OBC candidates she having been found in order of merit, her name has been recommended by RPSC to state for appointment as Medical Officer. It is now for the State of Rajasthan to consider offering the appointment to her and it is for the State of Rajasthan to act on that recommendation. It cannot refuse to act on that recommendation in

the absence of any cogent reasons having nexus to denial of such appointment.

We, therefore, direct the respondent State of Rajasthan to consider the recommendation made by the RPSC of the candidature of the petitioner for appointment as a Medical Officer as a candidate of reserved vacancy for OBC [Women] and if otherwise no impediment to offer her the appointment within a period of one month. The petitioner has been denied the appointment amongst OBC candidates alongwith other candidates found suitable at the same selection. The appointment is delayed because of the erroneous decision by the respondent to exclude her from consideration. In these circumstances, on appointment being offered to the petitioner, her seniority shall be considered as if she has been appointed alongwith the other candidates selected under same selection. However, she shall not be entitled for any emoluments for the period earlier to the date of appointment.

With these observations the appeal stands disposed off.

No costs.

[GOPAL KRISHAN VYAS],J. **[RAJESH BALIA], J.**

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